



Crofters (Scotland) Act 1993

1993 CHAPTER 44

Common Grazings

52 Miscellaneous provisions as to common grazings, as to lands held runrig, and as to use by crofters of peat bogs, etc. S

[^{F1}(1) Where it is averred by the grazings committee or the owner that a person has contravened, or failed to comply with, any common grazings regulations for the time being in force under section 49 of this Act, the committee or as the case may be the owner may apply to the Commission for a determination in the matter.

(1A) On receipt of an application made under subsection (1) above the Commission—

- (a) shall serve notice on the person of the averment; and
- (b) shall send a copy of that notice to the grazings committee and to the owner.

(1B) The person, the committee and the owner shall all be afforded the opportunity to make representations as regards the averment and if the Commission think fit the Commission may hear evidence in the matter.

(1C) If the Commission determine that the averred contravention or failure has occurred they may require the person—

- (a) to conform with the regulation in question, and
- (b) to make good, within such reasonable period as they shall specify, any damage which has directly resulted from the occurrence.

(1D) Where—

- (a) a requirement imposed under subsection (1C) above is not complied with (and subsection (1E) below does not apply), the Commission—
 - (i) may determine that all or part of the person's share in the common grazing is suspended for such period as they shall specify; and
 - (ii) if the non-compliance consists in a failure to make good damage within the period specified under subsection (1C)(b) above, may require it be made good within such further period as they may specify,

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- (b) all requirements imposed under subsection (1C)(a) above and any requirement imposed under sub-paragraph (ii) of paragraph (a) above (whether or not as that sub-paragraph applies by virtue of subsection (1E)(a) below) are complied with, the Commission may end a suspension imposed under sub-paragraph (i) of that paragraph.

(1E) Where, while all or part of the person's share in the common grazing is suspended by virtue of subsection (1D)(a)(i) above, a requirement imposed under subsection (1C)(a) above is not complied with as regards so much of the share as is not suspended, or as the case may be a requirement imposed under subsection (1D)(a)(ii) above is not complied with, the Commission—

- (a) may (but on one occasion only) extend either or both periods mentioned in subsection (1D)(a) above; or
- (b) may—
 - (i) determine that all or part of the person's share is terminated; and
 - (ii) apportion the share or part to other persons sharing in the common grazing.

[^{F2}(1EA) Where the Commission make a determination under subsection (1E) that all or part of a person's share in a registered common grazing is terminated—

- (a) the Commission must, as soon as reasonably practicable after making the determination, submit an application for registration of the termination by virtue of section 25 of the 2010 Act;
- (b) the termination takes effect on the date of registration.

(1EB) Any apportionment of all or part of a person's share in a registered common grazing under subsection (1E) above takes effect, as respects an application for registration of the apportionment by virtue of section 25 of the 2010 Act, on the date of registration.]

(1F) Reference in this section to a share in the common grazing includes reference to any rights and privileges pertaining to that share.]

- (2) Where it is prescribed by the common grazings regulations applicable to the common [^{F3}grazing] of a township that the right of a crofter to share in such [^{F3}grazing] shall be conditional on his making his croft available during the winter season for the accommodation of any stock belonging to other persons sharing in such [^{F3}grazing], any crofter may apply to the grazings committee for their consent to the exclusion of such stock from his croft or from part thereof, and if he is dissatisfied with the decision of the committee on such application he may appeal therefrom to the Commission.

Any consent given under this subsection by a grazings committee or, on appeal, by the Commission may be given subject to such conditions, if any, as the committee or the Commission, as the case may be, may think proper.

- (3) The Commission may, on the application of any crofters interested, after consultation with the grazings committee, apportion a common grazing shared by two or more townships into separate parts for the exclusive use of the several townships or may apportion a part of such grazing for the exclusive use of one of the townships.

[^{F4}(3A) In relation to a registered common grazing—

- (a) any apportionment of the common grazing under subsection (3) expires at the end of the period of 3 months beginning with the date on which the common grazing was so apportioned unless an application for registration of

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- the apportionment is submitted by virtue of section 25 of the 2010 Act before the expiry of that period;
- (b) the apportionment takes effect on the date of registration.]
- (4) The Commission may, on the application of any crofter [^{F5}who holds a right in a common grazing, and after consultation with the grazings committee, apportion a part of the] common grazing (including the site of the dwelling-house of the crofter so applying if situated on the common grazing), other than a part on which the grazings committee have planted trees and which they are using as woodlands under section 48(4) of this Act, for the exclusive use of the applicant.
- (5) An application under subsection (4) above shall be competent notwithstanding that every part of the grazing except the part in respect of which the application is made has already been apportioned under that subsection.
- [^{F6}(5A) Where an application is made under subsection (4) by the crofter of an unregistered croft, the Commission—
- (a) may not apportion a part of the common grazing unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application to apportion a part of the common grazing was made;
- (b) need not, during that 6 month period, consider the application to apportion a part of the common grazing until an application for first registration of the croft is submitted.
- (5B) Where an application under subsection (4) by the crofter of a registered croft (other than a first registered croft) is granted—
- (a) the apportionment of a part of the common grazing expires at the end of the period of 3 months beginning with the date on which the part was so apportioned unless an application for registration of the apportionment is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
- (b) the apportionment takes effect on the date of registration.
- (5C) In relation to a registered common grazing—
- (a) any apportionment of a part of the common grazing under subsection (4) expires at the end of the period of 3 months beginning with the date on which the part was so apportioned unless an application for registration of the apportionment is submitted by virtue of section 25 of the 2010 Act before the expiry of that period;
- (b) the apportionment of the part takes effect on the date of registration.
- (5D) But subsection (5C) does not apply to an apportionment which takes effect by virtue of subsection (5B).]
- (6) Where the Commission in pursuance of subsection (3) or (4) above apportion to a township or to an individual a part of a common grazing for its or his exclusive use, they may make the apportionment subject to such conditions, including conditions with respect to the fencing or the draining of the apportioned part, as they may think fit.
- (7) Notwithstanding anything in the ^{M1}Ground Game Act 1880, it shall be lawful for the crofters interested in a common grazing or in a part of a common grazing apportioned under subsection (3) above—
- (a) to appoint not more than two of their number; and

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(b) to authorise in writing one person bona fide employed by them for reward, to kill and take ground game on the common grazing or the part thereof, as the case may be; and for the purposes of the said Act of 1880 any person appointed as aforesaid shall be deemed to be the occupier of the common grazing or the part thereof, but shall not have the right to authorise any other person to kill and take ground game, and any person authorised as aforesaid shall be deemed to have been authorised by the occupier of the common grazing or the part thereof to kill and take ground game with firearms or otherwise.

[^{F7}(7A) Any transfer by a person who holds a right in a registered common grazing of that right to another person takes effect, as respects an application for registration of the transfer by virtue of section 25 of the 2010 Act, on the date of registration.]

(8) The Commission may, on the application of any landlord or crofter interested, apportion lands held runrig among the holders thereof in such manner and subject to such conditions as appears to the Commission in the circumstances of the case to be just and expedient.

[^{F8}(8A) Subsection (5C) applies to an apportionment under subsection (8) of registered lands held runrig as it applies to an apportionment under subsection (4) of a part of a registered common grazing, with the modification that the reference to section 25 is to be construed as a reference to section 32.]

(9) The Commission may draw up a scheme regulating the use by crofters on the same estate of peat bogs, or of seaweed for the reasonable purposes of their crofts, or of heather or grass used for thatching purposes, and the charge for the use of all or any of these may be included in the rents fixed for the crofts.

[^{F9}(10) Without prejudice to the generality of subsections (3), (4) and (8) above, the Commission may under any of those subsections (either or both)—

- (a) apportion a part for a period;
- (b) determine that an apportionment shall be subject to review at fixed intervals, which they shall specify.

(11) The Commission may extend any such period as is mentioned in subsection (10)(a) above on the application of the township which, or as the case may be the crofter who, has exclusive use.

[In relation to a registered common grazing—

^{F10}(11A) (a) any extension under subsection (11) of the period for which a part of a registered common grazing is apportioned ceases to have effect at the end of the period of 3 months beginning with the date on which the period was so extended unless an application for registration of the extension is submitted by virtue of section 25 of the 2010 Act before the expiry of that 3 month period;

(b) the extension takes effect on the date of registration.

(11B) Subsection (11A) applies to registered land held runrig as it applies to a registered common grazing, with the modification that the reference to section 25 is to be construed as a reference to section 32.]

(12) Without prejudice to subsection (10)(b) above, the Commission may, on the application of that township or crofter or of the grazings committee or owner—

- (a) review an apportionment made in pursuance of subsection (3) or (4) above;
- (b) (whether or not on such review)—

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- (i) vary or revoke any condition imposed under subsection (6) above;
- (ii) impose a new condition under that subsection;
- (iii) bring an apportionment made as mentioned in paragraph (a) above to an end.

[Subsection (12B) applies to an application by the crofter of a registered croft (other ^{F11}(12A) than a first registered croft) made under subsection (12) to bring to an end an apportionment made in pursuance of subsection (4).

(12B) Where the application is granted—

- (a) the granting of the application expires at the end of the period of 3 months beginning with the date of the granting unless an application for registration of the bringing to an end of the apportionment is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
- (b) the bringing to an end of the apportionment takes effect on the date of registration.

(12C) Where it is determined under subsection (12)(b)(iii) that an apportionment of a registered common grazing is to come to an end, the apportionment comes to an end, as respects an application for registration of the bringing of it to an end by virtue of section 25 of the 2010 Act, on the date of registration.

(12D) But subsection (12C) does not apply to an apportionment the bringing to an end of which takes effect by virtue of subsection (12B).]

(13) Where—

- (a) a period of apportionment fixed under subsection (10)(a) above (or so fixed and extended under subsection (11) above) comes to an end; or
- (b) it is determined on review under subsection (10)(b) above, or is determined under subsection (12)(b)(iii) above, that an apportionment is to come to an end,

the land in question reverts to being a common grazing.

(14) Where land reverts under subsection (13) above, the Commission may, having regard to the rights held in the common grazing immediately before the apportionment in question, make such determination as they consider equitable as to shares in the common grazing.

[Any determination under subsection (14) takes effect, as respects an application for ^{F12}(14A) registration of the making of the determination by virtue of section 25 of the 2010 Act, on the date of registration.]

(15) Subsections (10) to [^{F13}(14A)] above do not apply as respects land constituted as common grazing under section 51A of this Act.]

Textual Amendments

- F1** S. 52(1)-(1F) substituted for s. 52(1) (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 28, 43(3)** (with **ss. 40, 43(2)**); S.S.I. 2007/568, **art. 2**
- F2** S. 52(1EA)(1EB) inserted (30.11.2012) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **s. 57(2), sch. 4 para. 3(31)(a)** (with **s. 57(4)**); S.S.I. 2012/288, **art. 3(1)(b)(2)**, **sch. 1 Pt. 2** (with **sch. 2 para. 1(x)**)
- F3** Word in s. 52(2) substituted (25.6.2007) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **s. 43(3), sch. 1 para. 2(17)** (with **ss. 40, 43(2)**); S.S.I. 2007/269, **art. 2, sch.**

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Section 52. (See end of Document for details)

- F4** S. 52(3A) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(31)(b)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(x))
- F5** Words in s. 52(4) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 29(2)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F6** S. 52(5A)-(5D) inserted (30.11.2012 for specified purposes, 30.11.2013 in so far as not already in force) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(31)(c)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(c)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(w)19)
- F7** S. 52(7A) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(31)(d)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(x))
- F8** S. 52(8A) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(31)(e)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(x))
- F9** S. 52(10)-(15) added (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 29(3)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F10** S. 52(11A)(11B) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(31)(f)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(x))
- F11** S. 52(12A)-(12D) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(31)(g)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(x))
- F12** S. 52(14A) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(31)(h)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(x))
- F13** Word in s. 52(15) substituted (30.11.2013) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(31)(i)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c)

Marginal Citations

- M1** 1880 c. 47.

Changes to legislation:

There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Section 52.